

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

AUG 24 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0115-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
EDGAR TRAVIS CROSS,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR 94-307

Honorable Peter J. Cahill, Judge

REVIEW GRANTED; RELIEF DENIED

Edgar Travis Cross

Florence
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner Edgar Travis Cross was sentenced in 1995 to concurrent, presumptive prison terms of 11.25 and 3.75 years after a jury found him guilty of two felonies, theft by control and possession of drug paraphernalia, and a misdemeanor charge of displaying a fictitious license plate. His sentences were enhanced because he admitted having four prior felony convictions and having committed the new offenses while on parole.

Cross obtained leave to file a delayed appeal, and we affirmed his convictions and sentences in *State v. Cross*, No. 2 CA-CR 1998-0559 (memorandum decision filed Jan. 18, 2001).

¶2 In a delayed petition for post-conviction relief filed in December 2006 pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., Cross raised claims of ineffective assistance of trial counsel and sentencing error pursuant to *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348 (2000). The trial court denied relief without a hearing, summarily dismissing Cross's petition. The court found both of Cross's claims untimely, deemed his ineffective assistance claim precluded for that reason, and ruled *Blakely* and *Apprendi* inapplicable to Cross's sentences in any event.

¶3 Cross then filed a petition for review, nominally seeking review of the trial court's dismissal of his petition for post-conviction relief but framing the single issue presented for review as "whether the Arizona parole board had jurisdiction to revoke petitioner's parole on March 22, 2007 after petitioner's entire two-year period of parole from January 2005 to March 13, 2007 had expired." Because that issue was never presented to the trial court, there is no ruling below for us to review. *See generally* Ariz. R. Crim. P. 32.9(c) (within thirty days after trial court's final decision on petition for post-conviction relief, an aggrieved party may petition appellate court "for review of the actions of the trial court").

¶4 Moreover, the only issue raised in the petition for review concerns the legality of Cross's continued confinement, and the only relief he requests is his immediate release from custody. Because he has, in fact, now been released from the department of corrections, the only issue currently before us has become moot.

¶5 Accordingly, although we grant the petition for review, we deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge